IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

WP(C).No. 13005 of 2007(W)

SC.124/1996 of PRINCIPAL SUB COURT,PARAVUR

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PETITIONER:

V. RADHAKRISHNAN, KAMALALAYAM,
PALAYAMKUNNU P.O., VARKALA,
THIRUVANANTHAPURAM.

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. GOVINDA RAJ SEN @ BAJI,
SREELENKAPURI, CHERINIYOOR P.O.,
VARKALA.

3. R.JAYACHANDRAN,
KAKKATTU VEEDU, PERUNNA,
CHANGANACHERRY.

4. K.MANOJ KUMAR, KOIKAL VEEDU,
THAZHAKKARA, MAVELIKARA.

R1 BY GOVT. PLEADER SRI.S.U. NAZAR
R2 TO 4 BY ADV. SRI.K. RAVIKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

W.P.(C) NO. 13005 OF 2007

Dated this the 13th day of April, 2007

JUDGMENT

The petitioner is the defacto complainant in a prosecution for the offences punishable, inter alia, under Sec.307 read with Sec.149 of the IPC. Altogether there were 8 accused persons. Accused 1 and 7 are no more. Accused 4 to 6 and 8 alone are facing trial. Other accused have all absconded. The alleged incident had taken place as early as in 1992. The accused appears to have come to this Court on a couple of times. Ultimately, trial commenced before the learned Principal Assistant Sessions Judge. All prosecution witnesses have been examined. 313 examination is over. The matters stood posted for arguments. Notes of arguments have also been filed, it is submitted at the Bar. At that stage, on 24/3/07 the accused filed applications, wherein they expressed the apprehension that they may not get justice at

the hands of the learned Principal Assistant Sessions Judge. Various sweeping allegations were raised. It was stated that the depositions had not been recorded properly; that unauthorised corrections have been made in the depositions; that P.W.1, i.e., the petitioner herein, was found to be friendly with the learned Principal Assistant Sessions Judge and that the learned Judge had made statements in court in favour of P.W.1. In these circumstances, it was said that the accused persons have no confidence that justice will be rendered to them at the hands of the learned Principal Assistant Sessions Judge.

2. Judges must be made of sterner, stuff and if wanton allegations are raised, they should have the strength to ignore them. But unfortunately the learned Principal Assistant Sessions Judge appears to have submitted a letter dated 24/3/2007 enclosing a copy of the complaint filed by the 8th accused. After narrating the circumstances, the learned Principal Assistant Sessions Judge stated so:

> "Since the accused have lost faith on this court, I humbly submit herewith a copy of the petition for perusal and <u>for favourable orders to transfer the case to some other court</u> for the ends of justice."

3. The learned Sessions Judge, on receipt of the said letter dated 24/3/07, proceeded to pass an order under Sec.409(1) of the Cr.P.C. under which the case was transferred to the learned Additions Sessions Judge (Adhoc-III), North Paravur.

4. The petitioner was unaware of any attempt to transfer the case. But he came to know after the order was passed by the learned Sessions Judge and that the case has been directed to be transferred. Aggrieved by that he has come before this Court to complain about the order passed by the learned Sessions Judge.

5. It is submitted that absolutely no justifiable reason exists to warrant any action by the learned Sessions Judge under Sec.409 of the Cr.P.C. The learned Principal Assistant Sessions Judge had heard the evidence in detail. The impressions which a Judge who himself records evidence are important in the appreciation of evidence. By directing the unjustified transfer, the court denied to itself the opportunity for proper and effective appreciation of evidence. In these circumstances, it is prayed that the order passed under Sec.409 of the Cr.P.C. may be set aside and the learned Assistant Principal Sessions Judge may be directed to dispose of the case.

6. The learned counsel for the petitioner points out that Sec.409(2) of the Cr.P.C. reflects the anxiety of law to ensure that there is no unjustified and undeserved direction to interfere with the trial after the same has commenced. The accused who have been attempting to prolong and protract the proceedings have made use of this last opportunity to further protract the proceedings, it is submitted.

7. Notice was given to the learned counsel who appears for the accused before the court below. Advocate Mr. K.Ravikumar has appeared on their behalf. A report the learned Sessions Judge was also called for. I have heard the learned counsel for the rival contestants.

8. It is indeed unfortunate that at the fag end of the trial such a direction for transfer should be made which would oblige a Judge who has not heard the evidence to appreciate evidence and dispose of the matter. But I must realistically took note of the request of the learned Principal Assistant Sessions Judge to the learned Sessions Judge. When the Judge concerned who held the trial has such a reservation, I am certainly of opinion that the learned Sessions Judge did not commit any error in directing transfer under Sec.409(1) of the Cr.P.C. The totality of

circumstances have to be taken into consideration by the learned Sessions Judge under Sec.409(1) of the Cr.P.C. In the facts and circumstances of this case, I am of opinion that though the consequences are awesome, the learned Sessions Judge cannot be held to have committed any error in directing transfer.

9. I find merit in the contention of the learned counsel for the petitioner that the matter deserves to be disposed of as expeditiously as possible. I do also find merit in the submission that the matter has to be disposed of by a competent senior Judge who will be uninfluenced by the tactics that have been adopted in the course of trial. I do, in these circumstances, feel that the proper and appropriate direction that can be issued in the given circumstances is to direct the senior most Sessions Judge in the District – the Principal Sessions Judge, Ernakulam, himself to dispose of the case as expeditiously as possible.

10. The Registry was requested to contact the learned Principal Sessions Judge. It has been reported that the learned Principal Sessions Judge shall be sitting during vacation though not as vacation court; but as S.T.A.T. I am, in these circumstances, satisfied that the learned Principal Sessions Judge can be directed to sit during vacation and dispose of this case as

expeditiously as possible – at any rate, during the vacation itself.

11. This writ petition is, in these circumstances, allowed. The impugned order passed under Sec.409 of the Cr.P.C. is modified and it is directed that the learned Principal Sessions Judge, Ernakulam, shall himself dispose of the case i.e., S.C.No.124/96. The parties shall appear before the learned Principal Sessions Judge on 23/4/2007. The learned Principal Assistant Sessions Judge (Ad-hoc-III), North Paravur, before whom the case records are pending shall forthwith transmit the same to the learned Principal Sessions Judge, Ernakulam, in sufficient time so that the learned Judge can take up the matter for hearing and disposal on 23/4/2007. I do further direct that the learned Prosecutor at North Paravur who has been conducting the case shall himself continue to appear and conduct the case on behalf of the prosecution before the learned Sessions Judge. The learned Public Prosecutor shall communicate this direction to the learned Prosecutor at North Paravur who was conducting the case at North Paravur.

12. Communicate copies of this judgment to the learned learned Principal Sessions Judge, Ernakulam and the Principal Assistant Sessions Judge (Ad-hoc-III), North Paravur. Inform the

learned Principal Sessions Judge, Ernakulam, over the telephone so that the learned Judge can plan his work.

13. Hand over copies of this judgment to all concerned.

Sd/-

(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge